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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,017	03/26/2004	Yoshiki Kashimura	A01504	7725

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ROHM AND HAAS COMPANY  
PATENT DEPARTMENT  
100 INDEPENDENCE MALL WEST  
PHILADELPHIA, PA 19106-2399

EXAMINER

QAZI, SABIHA NAIM

ART UNIT PAPER NUMBER

1616

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/810,017	<b>Applicant(s)</b> KASHIMURA ET AL.	
	<b>Examiner</b> Sabiha Qazi	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**Final Office Action**

Claims 1-5 are pending. No claim is allowed. Acknowledgment is made of the response filed on 1/24/05.

The presently claimed invention is drawn to a method of suppressing the deterioration of the quality of an agricultural product comprising a step of contact-treating the agricultural product under reduced pressure conditions with a cyclopropene compound.

**Response to Remarks**

The arguments were fully considered, but are not found persuasive. Therefore, the rejections are maintained.

**Rejection Under 35 USC 112**

The Applicants argue that the 112 rejection should be withdrawn, as the term “reduced pressure” is not indefinite. The Examiner respectfully disagrees.

The Applicants argue, “...reduced pressure is any pressure below ambient that results in an improvement...over that obtained by normal pressure.” This is indefinite because it is unclear what *definite* pressures the Applicants are claiming.

**Rejection Under 35 USC 103(a)**

The difference between the instant invention and the prior art lies in the definition of “reduced pressure”. One skilled in the art must know the EXACT pressures or the RANGE of

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the pressures of the invention; otherwise the instant invention is obvious, as the prior art teaches the same method.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.*

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

What is intended by the phrase “reduced pressure” in claim 1? The Specification cites preferred pressures; these preferred pressures should be in claim 1 as well. A clarification is requested.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary*

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*skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over SISLER (US Patent No. 6194350) and SISLER et al. (US Patent No. 5518988)

SISLER and SISLER et al. teach methods of applying C<sub>1-4</sub> and C<sub>6-20</sub> alkyl cyclopropene derivatives and compositions thereof to block ethylene receptors in plants. It teaches a method of inhibiting an ethylene response in a plant, wherein said ethylene response is flower senescence.

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“Senescence” is defined<sup>1</sup> as “the state of being old,” or “the process of becoming old”. One skilled in the art can safely assume that plants deteriorate as they become old; with the knowledge that the prior art teaches a method for suppressing senescence and the assumption that plants deteriorate during senescence, one skilled in the art would come to the conclusion that the prior art teaches a method for suppressing senescence. For the SISLER document: See the entire document, especially claims 1, 9, 14, Table 1, lines 18-39 in col. 5, and lines 8-20 in col. 6. For the SISLER et al. document: See the entire document, especially lines 1-30 in col. 2, examples, and claims.

Instant invention is different from the prior art in claiming a broader, more generic scope.

It would have been obvious to one skilled in the art at the time of invention to prepare a method of suppressing the deterioration of the quality of an agricultural product comprising a step of contact-treating the agricultural product under reduced pressure conditions with a cyclopropene compound because the prior art teaches methods of applying C<sub>1-4</sub> and C<sub>6-20</sub> alkyl cyclopropene derivatives and compositions thereof to suppress the deterioration of a flower, which embraces the presently claimed invention. It would have been obvious to apply C<sub>5</sub> alkyl cyclopropene derivatives and compositions thereof because C<sub>1-4</sub> and C<sub>6-20</sub> have already been taught by the prior art.

R can be various substituents in the claims. The data gives limited teachings for R as claimed. A single species is seldom, if ever, sufficient to support a generic claim. In re Shokal, 242 F.2d 771, 113 U.S.P.Q. 283, 285 (C.C.P.A. 1957). See also, In re Grimme, 274 F.2d 949, 124 U.S.P.Q. 499, 501 (C.C.P.A. 1960) (the naming of a member of a genus or subgenus is not a

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<sup>1</sup> By Merriam Webster's Collegiate Dictionary, available online at <http://www.m-w.com/>

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proper basis for claiming the whole group).

Objective evidence of nonobviousness must be commensurate in scope with the scope of the claims. In *re Tiffin*, 171 USPQ 294. A showing limited to a single species can hardly be considered probative of the invention's nonobviousness in view of the breadth of the claims.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SABIHA QAZI, PH.D  
PRIMARY EXAMINER